

TAX TYPE: INCOME TAX

TAX YEAR: 2015

DATE SIGNED: 7/17/2020

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 19-1557</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2015</p> <p>Judge: Nielson-Larios</p>
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER 1, Taxpayer
REPRESENTATIVE FOR TAXPAYER, Representative

For Respondent: RESPONDENT, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE, for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. On DATE, Respondent (“Division”) issued a Notice of Deficiency and Audit Change to the Petitioner (“Taxpayer”) for the 2015 tax year. The Notice of Deficiency reflects the following amounts:

<u>Tax Year</u>	<u>Audit Tax</u>	<u>Interest</u>	<u>Penalties</u>	<u>Total</u>
2015	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In accordance with the Utah Code, interest was calculated through DATE, and continues to accrue on any unpaid balance. Through the audit, the Division increased the Taxpayer’s federal adjusted gross income (“FAGI”) by \$\$\$\$\$, from \$\$\$\$\$ to \$\$\$\$\$; decreased itemized deductions by \$\$\$\$\$, from \$\$\$\$\$ to \$\$\$\$\$; and reduced the Utah retirement credit from \$\$\$\$\$ to \$\$\$\$\$. The Division explained that these changes were caused by changes the IRS made to the Taxpayer’s federal tax information. The Taxpayer claims she did not file the original 2015 federal and state tax returns with the married-filing-joint filing status so the audit assessment should not be applied to her.

APPLICABLE LAW

Utah Code Ann. § 59-1-1417(1) (2015-present) provides that the burden of proof is upon the petitioner (the taxpayer) in matters before the Commission, as follows:

In a proceeding before the commission, the burden of proof is on the petitioner . . .

Utah Code Ann. § 59-10-103(1)(w)(i) (2015-present) defines “state taxable income” for a resident individual, as follows:

"Taxable income" or "state taxable income":

- (i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
 - (A) additions and subtractions required by Section 59-10-114; and
 - (B) adjustments required by Section 59-10-115. . .

Utah Code Ann. § 59-10-103(1)(a)(i) (2015-present) defines “adjusted gross income” for an individual, as follows:

(a) "Adjusted gross income":

- (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code . . .

Internal Revenue Code § 62 defines adjusted gross income for federal tax purposes.

Utah Code Ann. § 59-10-536(2)(a) (2015-present) provides a filing requirement on a taxpayer when the IRS audits and changes their federal income. Subsection § 59-10-536 states the following:

- (2) (a) (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because of an action by the federal government, the taxpayer shall file with the commission within 90 days after the date there is a final determination of the action:
 - (A) a copy of the taxpayer's amended federal income tax return; and
 - (B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.

. . . .

- (b) (i) Subject to Subsection (2)(b)(iii), the commission may assess a deficiency in state income taxes within three years after a notification or amended federal income tax return described in Subsection (2)(a) is filed.
- (ii) The amount of an assessment of tax under this Subsection (2)(b) may not exceed the amount of the increase in Utah tax attributable to the change described in Subsection (2)(a).
- (iii) If a taxpayer fails to report to the commission a change specified in this Subsection (2)(b), the assessment may be made at any time within six years after the date of the change.

. . . .

Utah Code Ann. § 59-10-503(1)(b)-(c) (2015-present) addresses when a husband's or wife's tax liability is either separate or joint and several. That section states in relevant part:

- (b) If the federal income tax liability of husband or wife is determined on a separate return for federal income tax purposes, the income tax liability of each spouse shall be determined on a separate return under this chapter.
- (c) If the federal income tax liabilities of husband and wife, other than a husband and wife described in Subsection (1)(b), are determined on a joint federal return, **they shall file a joint return under this chapter and their tax liability shall be joint and several.**

(Emphasis added.)

DISCUSSION

The Tax Commission received an electronically-filed 2015 Utah full-year resident return with married-filing-joint filing status for the Taxpayer. The IRS Account Transcript shows the IRS received a 2015 Federal tax return with married-filing-joint filing status for the Taxpayer on DATE. The 2015 filed returns show a FAGI of \$\$\$\$\$ and itemized deductions of \$\$\$\$\$. The 2015 returns were filed electronically by a paid TAX PREPARER. The information for this appeal includes 2015 Form 8879 with signatures for the Taxpayer and TAXPAYER 2, who was later divorced from the Taxpayer. The Taxpayer contests that she did not file the 2015 tax returns and she did not authorize TAX PREPARER to electronically send the 2015 tax returns; instead, she asserts that TAXPAYER 2 filed fraudulent returns in her name. On the Form 8879, the handwriting for TAXPAYER 2'S signature and for the Taxpayer's signature appears to be the same; TAXPAYER 2 appears to have signed both signatures. No information shows that the Taxpayer contested the married-filing-joint filing status with IRS.

On DATE, the Division changed the Taxpayer's 2015 Utah tax information to match changes the IRS made to the Taxpayer's 2015 federal tax information. Specifically, the Division increased the Taxpayer's FAGI by \$\$\$\$\$, from \$\$\$\$\$ to \$\$\$\$\$; decreased itemized deductions by \$\$\$\$\$, from \$\$\$\$\$ to \$\$\$\$\$; and reduced the Utah retirement credit from \$\$\$\$\$ to \$\$\$\$\$. The Division explained that the increase in FAGI was caused by unreported 1099-R income of \$\$\$\$\$ from INSURANCE COMPANY, unreported 1099-R income of \$\$\$\$\$ from CREDIT UNION, and an increase in the taxable portion of the Social Security income. The Division explained that the Utah retirement credit phased out based on the increase in the Taxpayer's income. The Division explained how the Utah changes corresponded to the

2015 IRS Account Transcript.¹ The IRS Transcript also shows the IRS assessed additional 2015 federal tax and penalties on DATE, and the 2015 federal tax balance was paid on DATE.²

The Taxpayer signed a durable power of attorney (“POA”) on DATE, in which she appointed TAXPAYER 2 as her attorney. There is no information showing the POA was revoked. The POA stated the following in part:

I, [Taxpayer] do hereby make, constitute and appoint my husband, TAXPAYER 2 . . . as my true and lawful attorney, for me and in my name, place and stead to do and perform all acts, binding me and my property, real, personal and mixed, as fully to all intents and purposes as I might or could do if personally present, including without limitation the generality of the foregoing, for me and in my name and on my behalf.

....

3. To prepare, execute, deliver and file Federal, state and local income . . . tax returns . . . and other documents of every kind relating to such taxes . . . and to do all things in connection with such taxes as fully as I could do myself and to appear for me and to represent me before the Internal Revenue Service and other Federal, state and local tax authorities in connection with any matter involving such taxes, with full power to do anything whatsoever in connection therewith, including full power of substitution and revocation[.]

....

My attorney shall exercise this power of attorney as I may direct from time to time or as my attorney, in his or her sole and complete judgment and discretion, shall deem necessary, wise, proper or appropriate for my benefit.

This power of attorney shall be effective immediately upon the execution hereof and shall remain in full force and effect until the receipt by my attorney or persons dealing with my attorney of a written revocation signed by me. This power of attorney shall remain in full force and effect notwithstanding any disability or incompetence. . . .

All persons dealing with my attorney may rely on a photostatic copy hereof without requiring the production of this original power of attorney.

....

¹ The revised FAGI and itemized deduction numbers from the audit notice correspond to the numbers on the IRS Account Transcript as follows:

\$\$\$\$\$	2015 FAGI per IRS Account Transcript
\$\$\$\$\$	Less: Itemized Deductions
\$\$\$\$\$	Difference
\$\$\$\$\$	Less: Two Personal Exemptions at \$\$\$\$\$ each.
\$\$\$\$\$	Equals: Taxable Income per IRS Account Transcript

² The Division’s assessment was made in accordance with § 59-10-536(2)(b)(ii)-(iii); the Taxpayer did not report the changes to her federal income as required by § 59-10-536(2)(a)(i).

The Taxpayer's representative argued that the Taxpayer was the victim of TAXPAYER 2, because he filed the 2015 returns against her interests, without informing her of the returns or allowing her a chance to review them. He argued that, overall, it is unjust to hold the Taxpayer responsible for the state audit. He further explained at the hearing that the Taxpayer and TAXPAYER 2 married years before 2015. It was a second marriage with a prenuptial agreement. The Taxpayer and TAXPAYER 2 kept their finances separate. The Taxpayer paid for the home, food, and laundry; TAXPAYER 2 sometimes helped with utilities. The Taxpayer did not know about TAXPAYER 2'S 2015 1099-R income and did not benefit from it. They filed separate tax returns until the 2012 tax year. The Taxpayer relied on tax professionals for her filings; she came from FOREIGN COUNTRY 1 and is unknowledgeable about taxes. In 2012, TAXPAYER 2 asked the Taxpayer to file tax returns with the married-filing-joint filing status. The Taxpayer agreed, trusting TAXPAYER 2 to do the taxes. The Taxpayer's representative asserts that TAXPAYER 2 lured the Taxpayer into agreeing to file with the married-filing-joint filing status to make her jointly and severally liable while he never intended to truthfully report and pay the tax. He did not file the 2012-2014 taxes timely. Instead he filed the 2012-2015 taxes on DATE. He did not show the Taxpayer the 2012-2015 tax returns or pay the taxes owing. She did not sign those tax returns. The Taxpayer's representative asserts that TAXPAYER 2 filed fraudulent returns. The TAX PREPARER, sent those returns electronically. The Taxpayer's representative noted that no information presented showed that THE TAX PREPARER had a copy of the POA in his file. In DATE, a petition for divorce was filed. Through discovery for the divorce proceedings, the Taxpayer learned of the tax liability of approximately \$\$\$\$ for the 2012-2015 tax years. The \$\$\$\$ did not include the IRS' 2015 assessment made on DATE. Most of the \$\$\$\$ owed was for TAXPAYER 2'S self-employment taxes. A trial for the divorce was held on DATE. On DATE, the IRS assessed additional 2015 federal tax for unreported income; TAXPAYER 2 had cashed in a life insurance policy in 2015. The Taxpayer did not foresee the state tax ramifications of the IRS assessment.³ On DATE, the Taxpayer filed an innocent spouse claim with the IRS. On DATE, TAXPAYER 2 died. The Taxpayer's representative and the representatives of TAXPAYER 2 continued resolving issues relating to the divorce proceedings. On DATE, the marital house was sold. The federal taxes were paid from the proceeds of that sale. On DATE, the divorce decree was issued. On DATE, the IRS received a payment covering the federal taxes owing. The IRS closed the Taxpayer's federal innocent spouse claim because the federal taxes were paid. On DATE, the Division issued the 2015 Notice of Deficiency to the Taxpayer.

For the POA, the Taxpayer's representative explained the following. The Taxpayer does not remember signing the POA. Around the time she signed it, she spent a lot of time in FOREIGN COUNTRY

³ When the IRS changes a taxpayer's federal income, that change can carry over to the taxpayer's state income, requiring the taxpayer to file an amended state income tax return. See § 59-10-536(2)(a)(i).

I taking care of her mother. She never intended TAXPAYER 2 to use the POA while she was in the United States. Also, she never intended for him to use it to make her jointly and severally liable for taxes he should, but would not, pay. The Taxpayer's representative argued that the POA did not give TAXPAYER 2 the right to abuse her.

For the Taxpayer's ability to pay, the Taxpayer's representative explained the following. She does not have the ability to pay the state tax assessment. She is now over ##### years old, and is just barely getting by financially. She is the legal guardian of two of her grandchildren, whom she financially supports. She earns some Social Security income and she was working in a stadium's food service for a low hourly rate, but with COVID-19, she cannot work there now. TAXPAYER 2 trust can afford to pay the assessment and should be held responsible. The Taxpayer's representative noted that the trust did not appeal TAXPAYER 2 Utah audit assessment or participate in this appeal.

The Division explained the following about its 2015 audit assessment. The Taxpayer filed a 2015 Utah resident return with married-filing-joint filing status. This state filing status matches that of the federal return. The IRS made changes to the Taxpayer's 2015 federal tax information. The Division changed the Taxpayer's 2015 state tax information to match the 2015 federal tax information. Under the Utah Code, a resident individual is assessed Utah income tax on all income. Furthermore, under the Utah Code, the Taxpayer has joint-and-several liability for the state taxes based on her married-filing-joint filing status. The Division noted it is unknown who signed the 2015 Utah return, which was submitted electronically; however, TAXPAYER 2 was authorized to sign the Taxpayer's 2015 tax returns on the Taxpayer's behalf, based on the POA. The Division noted that the burden of proof was on the Taxpayer for this proceeding.

After considering the information both parties presented, the audit assessment should be sustained. The Taxpayer filed 2015 tax returns with married-filing-joint filing status. The IRS currently shows that filing status for the 2015 federal return. The information shows TAXPAYER 2 exercised his power, provided in the POA, to act on behalf of the Taxpayer and file the returns. No information shows the Taxpayer revoked that POA. The information presented does not show that TAXPAYER 2 deliberately failed to report the income from the life insurance policy rather than simply made a mistake about that income's taxability. The information presented also does not show that TAX PREPARER acted in bad faith in relying on the Form 8879, which TAXPAYER 2 was authorized by the POA to sign on behalf of the Taxpayer.

Because the Taxpayer filed the 2015 tax returns with married-filing-joint filing status, she is jointly and severally liable under Utah Code Ann. § 59-10-503(1)(c) for the 2015 audit assessment, even though the federal change to the FAGI related to TAXPAYER 2 unreported income. The Taxpayer's arguments about her ability to pay and about the fairness of assessing her versus assessing the trust only, do not change the application of § 59-10-503(1)(c). **However, the Taxpayer may contact the Taxpayer Services**

Division at 801-297-7703 and explain her inability to pay. She may ask the Taxpayer Services Division about the options that may be available to her based on her difficult financial situation, including any qualifications for state innocent spouse relief or other possible alternatives.⁴ The Taxpayer Services Division, rather than the Auditing Division or the Appeals Unit, has discretion to make decisions about the tax collection issues for the Taxpayer's situation.

Aimee Nielson-Larios

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's audit assessment for the 2015 tax year. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2020.

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.

⁴ The Commission does not know the status of any state innocent spouse claim.